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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
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1998 Biennial Regulatory Review -- ) MM Docket No. 98-93  
Streamlining of Radio Technical Rules in )  
Parts 73 and 74 of the Commission's Rules )

To: The Commission

**REPLY COMMENTS OF NATIONAL PUBLIC RADIO, INC.**

National Public Radio, Inc. ("NPR") submits these Reply Comments in response to the comments filed regarding the Notice of Proposed Rulemaking, released June 15, 1998, in the above-captioned proceeding (the "NPRM").

In its initial Comments, NPR stressed its support for the Commission's overall efforts to streamline the FM technical rules, but identified several concerns of NPR and its member stations. NPR files these Reply Comments to address various points made in the comment phase of this proceeding.

First, as discussed below, several commenters raise valid concerns about the impact of the proposed negotiated interference agreement rules on the development and implementation of in-band/on-channel ("IBOC") digital radio. In addition, the comments submitted in this proceeding provide further support for NPR's contentions that: (a) the Commission should adopt strict safeguards to prevent contingent applications that involve cancellation of a noncommercial educational ("NCE") FM station from harming the public interest; (b) the point-to-point ("PTP") interference prediction methodology proposed by the Commission is not the most accurate or easily replicable method for predicting interference; (c) the Commission should not adopt an

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arbitrary percentage requirement for coverage of an NCE FM station's community of license; and (d) the Commission's streamlining proposals should be adopted, although with some safeguards to prevent spectrum warehousing.

**I. The Commission Should Defer The Decision On Its Proposals To Adopt Negotiated Interference Rules And To Establish A New Class C0 FM Station Pending Further Analysis Of IBOC Digital Radio**

NPR initially supported the FCC's proposal to allow negotiated interference agreements that would result in prohibited interference, provided the agreements satisfy four limiting criteria.<sup>1</sup> For years, NCE FM licensees have grappled with interference from other stations when establishing new stations on the reserved FM band, and the use of negotiated interference agreements with the criteria proposed by the Commission seemed workable in the reserved band in light of this experience.

However, several comments in this proceeding raise important concerns about the impact of such agreements on the overall integrity of the FM band and, as a result, the development and implementation of IBOC digital radio.<sup>2</sup> As Fuller-Jeffrey Broadcasting Companies, Inc. explained, IBOC digital radio is still in the testing and development phase.<sup>3</sup> Initial testing has suggested that the implementation of IBOC digital audio broadcasting could create notable

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<sup>1</sup> See Comments of NPR at 4; NPRM at ¶ 20.

<sup>2</sup> See Comments of Fuller-Jeffrey Broadcasting Companies, Inc. ("Fuller-Jeffrey") at 1-2 (stating that technical requirements for acceptable digital performance remain unknown and any relaxation of current interference standards could limit full implementation of IBOC); Comments of National Association of Broadcasters ("NAB") at 9-20 (focusing on the impact of the proposed negotiated interference rules on the integrity of the FM band); Comments of Association of Federal Communications Consulting Engineers ("AFCCE") at 1 (commenting that negotiated interference agreement would degrade the FM service).

<sup>3</sup> See Comments of Fuller-Jeffrey at 2.

adjacent-channel interference.<sup>4</sup> Further analysis of the interference created by each IBOC system proponent remains necessary. The introduction of additional interference to the FM band while this testing proceeds could have a serious and detrimental impact upon the industry's analysis and the ultimate development and implementation of IBOC digital radio.

While the establishment of a viable IBOC technical standard has taken longer than expected, it appears that there has been significant progress towards the development of an IBOC standard. As the Commission is undoubtedly aware, USA Digital Radio Partners, L.P. has petitioned the Commission to initiate a rulemaking proceeding to establish both a technical standard and applicable service rules.<sup>5</sup> Public comment on this Petition for Rulemaking is not due for several more weeks, and NPR reserves judgment on the particulars of that Petition, but USA Digital Radio Partners, L.P. has clearly made a substantial showing in favor of an IBOC rulemaking proceeding.

Accordingly, NPR urges the Commission to defer a decision on its proposed negotiated interference agreement rules and revisit the proposal in 18-24 months when more information is available concerning the impact of IBOC digital radio. For the same reasons, the Commission should defer adoption of other rules that could significantly alter the FM band, such as the proposed establishment of a new Class C0 (C Zero) service, pending further analysis of IBOC technology.

Although NPR urges the Commission to defer decision on the proposed negotiated interference agreement rules, the Commission should not continue to delay action on applications

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<sup>4</sup> See Comments of NAB at 30.

<sup>5</sup> Petition for Rulemaking for In-Band On-Channel Digital Audio Broadcasting, RM -9395, DA 98-2244 (rel. November 6, 1998).

for new NCE FM stations in the reserved band pending conclusion of this proceeding if those applications would have been granted under established Commission precedent regarding interference among NCE stations. It would be unfair to delay the construction of new NCE FM stations by licensees which have proceeded, and invested substantial sums, based on long-standing – and still-existing – precedent.

If, despite these arguments, the Commission decides to adopt its negotiated interference proposal, NPR supports du Treil, Lundin & Rackley, Inc.’s proposal to clarify the fourth criteria for negotiated interference agreements. Specifically, in demonstrating the existence of at least five remaining aural services, applications to implement negotiated interference agreements among NCE FM stations must demonstrate that the applications do not create any “white” or “gray” public radio areas (i.e., do not result in the loss of the only public radio station, or one of only two public radio stations, in the interference area).<sup>6</sup> The Commission should take this a step further and require that negotiated interference agreements among commercial broadcasters also must not create any white or gray public radio areas.

## **II. The Commission Must Carefully Scrutinize Contingent Applications Proposing The Cancellation of NCE Stations To Assess Their Impact On The Public Interest**

In its Comments, NPR urged the Commission to protect against any detrimental loss of service caused by contingent applications proposing cancellation of an NCE FM license.<sup>7</sup> Such applications should be scrutinized carefully by the Commission to ensure that they do not harm

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<sup>6</sup> See Comments of du Treil, Lundin & Rackley, Inc. at 4; *see also* Comments of NPR at 6 (suggesting a similar white/gray public radio area prohibition in connection with contingent proposals).

<sup>7</sup> See Comments of NPR at 6.

the public interest. In connection with this careful scrutiny, NPR suggested stricter conditions than those proposed by the Commission, including prohibiting contingent proposals which would result in the creation of any white or gray *public* radio area and establishing a local service floor on a case-by-case basis which includes at least one public radio service and considers the proportion of both noncommercial and commercial radio stations.<sup>8</sup>

These conditions are supported by the comments of du Treil, Lundin & Rackley.<sup>9</sup> NPR also agrees with du Treil, Lundin & Rackley that in the Commission's scrutiny of contingent applications proposing cancellation of an NCE FM service, favorable consideration might be given to those applications which would restore service to a white or gray public radio area.<sup>10</sup> Given the long-standing and substantial Federal interest in preserving and promoting public telecommunications,<sup>11</sup> such additional protective measures as NPR and others have proposed are clearly warranted.

### **III. The Comments Demonstrate That The Proposed Interference Prediction Methodology Should Not Be Adopted**

Many of the broadcast engineers participating in this proceeding opposed the adoption of the PTP interference prediction methodology as proposed by the Commission.<sup>12</sup> Commenters

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<sup>8</sup> *See id.* at 6-7.

<sup>9</sup> *See* Comments of du Treil, Lundin & Rackley, Inc. at 2 (suggesting that the FCC prohibit proposals that create "white" or "gray" NCE service areas, and refrain from establishing a specific local service floor).

<sup>10</sup> *See id.*

<sup>11</sup> *See* 47 U.S.C. § 396(a)(7); Comments of NPR at 6.

<sup>12</sup> *See* NPRM at ¶¶ 29-35; Comments of AFCCE at 4; Comments of Hatfield & Dawson Consulting Engineers, LLC ("Hatfield & Dawson") at 9; Comments of NAB at 24-30.

questioned the accuracy of the methodology and the ability of applicants to replicate the results achieved by the FCC.<sup>13</sup> Moreover, like NPR, several commenters preferred the Longley-Rice methodology to the FCC's proposed PTP model as an alternative prediction method because of its widely-known and widely-recognized track record and for purposes of consistency.<sup>14</sup> Use of the Longley-Rice methodology also would assure "apples-to-apples" contour protection analysis between TV/DTV and NCE FM interference.<sup>15</sup> Accordingly, the Commission should adopt the Longley-Rice methodology rather than the proposed PTP model as an alternative prediction method.

#### **IV. The Comments Support Requiring NCE FM Stations To Provide 60 dBu Service To A Portion Of Their Communities Of License, But Do Not Support An Arbitrary Percentage Of Coverage Requirement**

Like NPR, parties commenting on this issue supported the FCC's proposal to require new or newly-modified noncommercial educational FM stations to provide 60 dBu service to "a portion" of their communities of license.<sup>16</sup> However, not one commenter suggested a specific percentage of the population or area which must be covered by the NCE FM station. Thus, the designation of a specific percentage of the population or area that must be covered by a NCE FM station would be arbitrary and without any basis in the record.

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<sup>13</sup> See Comments of NPR at 7; Comments of NAB at 24-30; Comments of Hatfield & Dawson at 2-9.

<sup>14</sup> See Comments of NPR at 7-8; Comments of AFCCE at 4; Comments of du Treil, Lundin & Rackley, Inc. at 5-6.

<sup>15</sup> See Comments of NPR at 7-8.

<sup>16</sup> See NPRM at ¶ 58; Comments of NPR at 2-3; Comments of AFCCE at 6; Comments of Graham Brock, Inc. at 7; Comments of Sound of Life, Inc. at 6.

Instead of establishing specific coverage requirements, the Commission should simply require NCE FM stations to cover “a portion” of their communities of license, and leave the precise portion of the community of license to licensee discretion based on unique targeted audience (e.g., a university community), tower site options and other relevant factors. The Commission might then engage in a case-specific review of the public interest impact of an application where an NCE FM applicant proposes (a) a new station serving less than a significant portion of the community of license, or (b) a reduction in its existing coverage of the community of license.<sup>17</sup> In this way, the Commission can balance the interests of assuring service to a station’s community of license with the prevailing financial, technical or other circumstances that may limit the ability of the station’s licensee to serve an ever greater portion of the community of license.

**V. The Comments Support The FCC’s Streamlining Proposals, Including Use of First Come/First Served Processing For FM Translators As Well As NCE FM And AM Stations**

The comments submitted in this proceeding uniformly supported the FCC proposals to streamline FM processing by (a) expanding the definition of a minor change for the NCE FM, AM and FM translator services, (b) using a first come/first served processing system for minor change applications filed by NCE FM and AM stations, and (c) using a single-step application process for coordinate corrections and FM translator and FM booster power reductions.<sup>18</sup> These

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<sup>17</sup> See Comments of NPR at 3; *see also* Comments of AFCCE at 6 (suggesting a prohibition on modification applications proposing a decrease in signal level coverage of the principal community).

<sup>18</sup> NPRM at ¶¶ 45-54. *See, e.g.,* Comments of NPR at 8; Comments of NAB at 21-22; Comments of AFCCE at 6; Comments of Fuller-Jeffrey at 4; Comments of Sound of Life, Inc. at 5; Comments of West Virginia Radio Corporation at 5-6.

proposals, which will expedite service improvements and preserve scarce station resources, should be adopted.

However, two entities opposed the Commission's proposal to use a first come/first served processing system for FM translators on the grounds that FM translators are a secondary service.<sup>19</sup> Contrary to the views of these commenters, the Commission can implement a first come/first served processing system for FM translators without disrupting the secondary status of the service. The first applicants to file FM translator applications will simply have priority in processing over other FM translator applicants. First come/first served processing will expedite modifications and improvements to FM translators, without severely straining scarce station resources, by avoiding mutual exclusivity. This is particularly important for NCE FM licensees in light of the uncertainty concerning the resolution of their mutually-exclusive FM translator applications.<sup>20</sup>

In adopting first come/first served processing rules for minor changes in the FM translator, NCE FM and AM services, however, the Commission should heed Educational Information Corporation's warning to "be wary lest certain broadcasters implement a 'blanket the earth' policy and, accordingly, apply for every open frequency remaining."<sup>21</sup> To protect stations with actual upgrade plans, the Commission should delay the initiation of the first

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<sup>19</sup> See Comments of Educational Information Corporation at 11; Comments of Hatfield & Dawson at 10.

<sup>20</sup> See *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rulemaking*, MM Docket No. 95-31 (rel. October 21, 1998).

<sup>21</sup> Comments of Educational Information Corporation at 11.



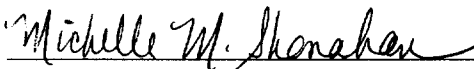
come/first served processing system for a sufficient period to give stations with fewer resources the opportunity to reflect upon their needs and file one of the first minor change applications. Moreover, to discourage blanket filings, the Commission should strictly enforce construction permit extension rules when faced with evidence of spectrum warehousing.<sup>22</sup>

## VI. Conclusion

For these reasons, NPR supports many of the Commission's proposals to streamline the FM technical rules, but urges the Commission to ensure that the rules it adopts do not have a detrimental impact upon the availability and strength of public radio service or the development and implementation of IBOC digital audio broadcasting.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.



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December 4, 1998

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<sup>22</sup> See Comments of NPR at 8-9.